

REMARKS

Amended claims 1-11 and new claims 12 and 13 are presented for reconsideration.

New claim 12 is derived from original claim 6. New claim 13 is derived from original claim 11. These new claims do not add new matter.

In the Office Action of May 16, 2003, Paper No. 6, the Office noted that a copy of a Patent Abstract from Japan was identified on the Form 1449, but was not submitted. Applicants submit the document attached herewith. This document includes the abstract of Japanese patent application 06-276939, which is the Japanese abstract indicated on page 2 of the International Search Report. This is the document that corresponds to the entry on the Form 1449 previously filed.

The Office objected to claims 3-11 as being in improper form due to multiple dependency. Applicants have amended claims 3-11 to depend only from claim 1, and therefore request that the objection be withdrawn, these claims examined on their merits, and allowed.

The Office rejected claims 1 and 2 under 35 U.S.C. § 102(b) in light of U.S. Patent No. 5,760,082 ("the '082 patent"), U.S. Patent No. 5,770,247 ("the '247 patent"), International application WO 96/38137, and International application WO 97/18320. The Office asserted that each of these references disclose conjugated linoleic acid (CLA) in food products and that milk is an emulsion.

Applicants traverse this rejection because the claimed invention is of a food product comprising esterified CLA, in the form of a glyceride, wherein the fat content of the food product is less than 50% by weight, and the food substance comprises from 1 to 15% CLA. None of the documents cited by the Office discloses each and every

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element of the claims and therefore none anticipate the claimed invention. See *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) ("A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.").

For example, the '082 patent discloses dietetic food prepared with non-esterified CLA instead of esterified CLA. The only example in this patent that teaches esterified CLA discloses a composition for parenteral administration, see '082 patent at Example 2, which cannot be considered a food composition based on a substance derived from milk.

Similarly, the '247 patent teaches a method of increasing the CLA content in milk by modifying the food of cows. The resulting milk, though, is not described as having "from 1 to 15% of mono-, di- and/or triglyceride of one or more active isomers of conjugate linoleic acids" as the amended claims recite.

WO 96/38137 teaches milk naturally enriched in CLA by addition of bacteria capable of bioprocessing non-conjugated linoleic acid. The composition disclosed in this application includes CLAs that are present at a very low level, and the food fat content of the food substance comprising the CLA is not defined as less than 50%, as recited in the claimed invention.

Finally, WO 97/18320 discloses food supplements, but not food products, that "comprise 1 to 15% mono-, di- and/or triglycerides of one or more active isomers of conjugate linoleic acids" as recited in the claimed invention.

Because none of these documents discloses esterified CLA in a food product with a fat content less than 50%, wherein the CLA comprises 1 to 15% mono-, di-

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and/or triglycerides of one or more active isomers of conjugate linoleic acids, none of the documents anticipates the claimed invention. Therefore, Applicants respectfully request that the rejection be withdrawn.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: November 14, 2003

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Attachment: Patent Abstracts of Japan, for 06-276939.

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